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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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No. 1028

JESSE GREEN IN BEHALF OF HIMSELF AND BESSIE
HENDERSON, ALDO THOMPSON, GEORGE
BROWN, ET AL.,

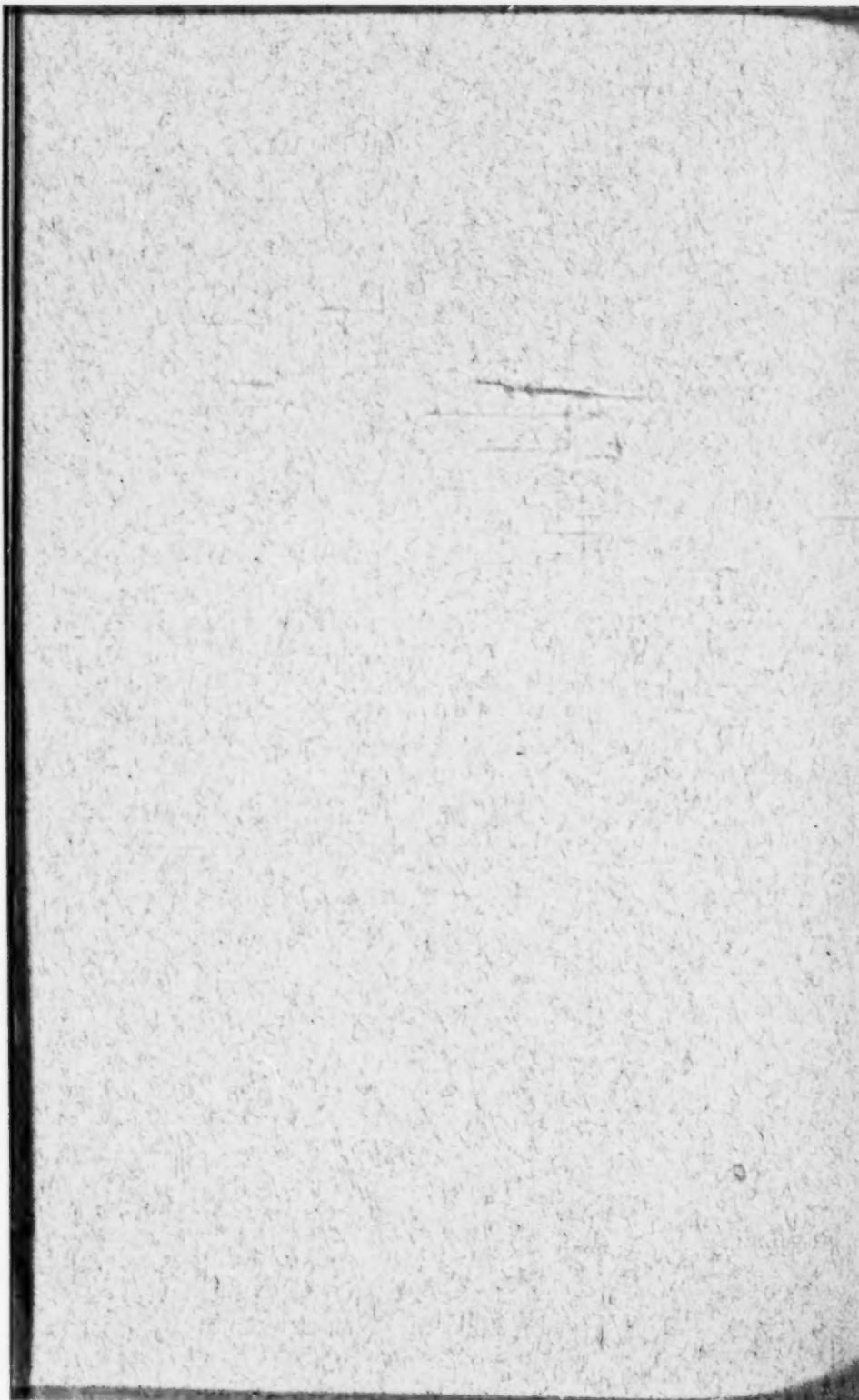
Petitioners,

vs.

ANCHOR MILLS COMPANY, A CORPORATION

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NORTH
CAROLINA AND BRIEF IN SUPPORT THEREOF.**

**J. F. FLOWERS,
Counsel for Petitioners.**



INDEX

SUBJECT INDEX

	Page
Petition for writ of certiorari.....	1
I. Summary statement of matter involved.....	1
II. Jurisdiction.....	3
III. Reasons for granting certiorari.....	3
Prayer for writ.....	4
Brief in support of petition.....	5
Opinion of the court below.....	5
Jurisdiction.....	5
Statement of facts.....	5
Statement of case.....	7
Specification of errors.....	7

CASES CITED

<i>Kirschbaum v. Walling</i> , 316 U. S. 517, 86 L. Ed. 1638..	3,6
<i>Walton v. Southern Package Corp'n</i> , 88 L. Ed. 220.....	6,7

STATUTES CITED

Fair Labor Standards Act of 1938, 29 U. S. C. A. 201-219.....	1,2
Judicial Code, sec. 237 as amended.....	5



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*To the Hon. Harlan F. Stone, Chief Justice of the United
States and the Associate Justices of the Supreme Court
of the United States:*

Your petitioner respectfully shows:

I

The plaintiff's instituted this action in the Superior Court of Mecklenburg County, North Carolina, on the 30th day of April, 1943, and thereafter filed a complaint against the defendant seeking to recover overtime compensation, liquidated damage, interest and Attorney's fees under the Fair

Labor Standards Act of 1938, 29 U. S. C. A. 201-219. The case came on for trial at the May Term, 1944, when a jury trial was waived and the Court proceeded to find the facts and rendered judgment thereon, as appears on pages 22 to 30 of the record. It was found as a fact by the Trial Court that Southern Bell Telephone & Telegraph Company occupied about 30% of the entire office space of the building, and that the occupants of much the greater part of the remaining space were engaged in interstate commerce, and that the plaintiffs were engaged as firemen, janitors, cleaners, elevator operators and other service employees of the office building owned by the defendant, and in connection with which the plaintiff and the persons upon whose behalf he prosecuted the action were employed and engaged, and that at the times referred to in the complaint the defendant paid to the plaintiffs a compensation for their services less than the amounts to which they would have been entitled had the defendant complied with the provisions of the Fair Labor Standards Act of 1938. On the 29th day of June, 1944 the Superior Court of Mecklenburg County through Judge William H. Bobbitt rendered judgment denying the plaintiffs' right to recover, and holding that these employees of the defendant's office building were not so related to interstate commerce or interstate communication and transmission as to entitle them to the benefits of the Fair Labor Standards Act, and dismissing this action as of non-suit. Appeal from this decision was prosecuted to the Fall Term, 1944 of the Supreme Court of the State of North Carolina, which Court heard the said appeal and rendered its judgment on the 13th day of December, 1944, which decision is reported in 224 N. C. page 714, by which decision the judgment of the Superior Court of Mecklenburg County was affirmed.

II

It is contended that the Supreme Court has jurisdiction to review the judgment here in question because a Federal question of substance has been decided by the said Court in a manner contrary to the decisions of the Supreme Court of the United States, or if it be held that the question here presented is different from the one presented in *Kirschbaum v. Walling*, 316 U. S. 517, 86 L. Ed. 1638, then the Supreme Court of the State of North Carolina has decided this question in a way probably not in accord with applicable decisions of the Supreme Court of the United States.

III

In the above cited case of *Kirschbaum v. Walling*, this Court held that service employees in a loft building "had such a close and immediate tie with the process of production for commerce and were, therefore, so much an essential part of it that the employees are to be regarded as engaged in an occupation necessary to the production of goods for commerce", and the plaintiff and persons upon whose behalf this action is prosecuted had the same relation to interstate commerce as the employees in the *Kirschbaum v. Walling* case bore to the production of goods for commerce, and it is pointed out that the statute above cited, and under which the plaintiffs claim their rights provides that "commerce means trade, commerce, transportation, transmission or communication among the several States, etc.", and it is pointed out that the Court found that 30% of the building in question was occupied by Southern Bell Telephone & Telegraph Company (R. 23), and your petitioner contends that service employees of a building occupied and used in communication and transmission is within the purview of the Fair Labor Standards Act as much and as closely

within the same as are the service employees of a building in which goods are produced for interstate commerce.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of the State of North Carolina commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court of the State of North Carolina had in the case numbered and entitled on its docket for the Fall Term, 1944, in the Fourteenth District of the said State, being No. 524 of said Fall Term of 1944, and entitled: "Jesse Green on behalf of himself and others against Anchor Mills Company, from Mecklenburg", to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment herein of the Supreme Court of the State of North Carolina be reversed by the Court, and for such other relief as to this Court may seem proper.

This the — day of March, 1945.

JESSE GREEN on Behalf of Himself
and Others,
By J. F. FLOWERS,
Counsel for Petitioner.

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